

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JERAL PEOPLES,

Petitioner,

v.

Case No. 2:10-cv-49
HON. R. ALLAN EDGAR

GARY CAPELLO,

Respondent.

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OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on November 2, 2010. The Report and Recommendation was duly served on the parties. The Court has received objections from petitioner. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Petitioner objects to the recommendation that petitioner's motion to stay his petition be denied. The magistrate judge assumed that petitioner was attempting to assert a Fourth Amendment claim. It is not entirely clear what claim or claims petitioner is seeking to exhaust in the state courts. It now appears that petitioner is attempting to exhaust the claim that he was never informed by the trial court that he was waiving his right to appellate counsel by pleading *nolo contendere* to assault with intent to do great bodily harm less than murder. However, petitioner also states that appellate counsel was appointed. Petitioner has also provided a letter from the trial court

that indicates that “correspondences” petitioner mailed to the court are being reviewed by Judge Michael J. Callahan. However, until petitioner states exactly what constitutional issues he wishes to pursue, this Court cannot stay the proceedings in this case. Petitioner has completely failed to show this Court that he is pursuing any specific constitutional issue that could justify a stay of these proceedings.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #90) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that petitioner’s motion to stay the petition (Docket #62) and motion to amend the petition (Docket #60) are DENIED.

Dated: 3/8/11

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE